

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTATE OF WILLIAM ABBE et al.,

Plaintiff,

v.

CITY OF VANCOUVER et al.,

Defendant.

CASE NO. 3:21-cv-05790-LK

AGREED MOTION AND ORDER
GRANTING MOTION FOR
PARTIAL DISMISSAL AS TO
PLAINTIFF'S SECOND CAUSE OF
ACTION AND PLAINTIFF'S
CLAIM FOR PUNITIVE
DAMAGES AGAINST
DEFENDANT CITY OF
VANCOUVER

Plaintiff and Defendants, by and through undersigned counsel of record, hereby jointly move the Court for the following relief:

1. The United States Supreme Court has held that a “citizen’s claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other ‘seizure’ of his person ... [is] properly analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard, rather than under a substantive due process standard.” *Graham v. Connor*, 490 U.S. 386, 388 (1989). Because Plaintiff’s First Cause of Action alleges excessive force under the Fourth Amendment, Plaintiff’s Second Cause of Action (Dkt. 1 ¶¶ 6.1-6.8), which

claims a violation of the Fourteenth Amendment due to alleged excessive force, should be dismissed without prejudice as duplicative of Plaintiff's First Cause of Action.

2. Plaintiff's claim for punitive damages (Dkt. 1 ¶¶ 7.9 & 8.7) against Defendant City of Vancouver should be dismissed with prejudice as barred by *City of Newport v. Fact Concerts*, 453 U.S. 247, 271 (1981).

**BY THE SIGNATURES OF THE ATTORNEYS OF RECORD, THE PARTIES SO
STIPULATE TO THE FOREGOING.**

DATED on January 11, 2022.

DATED on January 11, 2022.

/s/ D. Angus Lee
(per email authorization dated 1/10/2022)
D. Angus Lee, WSBA No. 36473
Attorney for Plaintiff
angus@angusleelaw.com

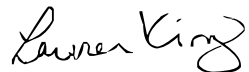
/s/ Daniel G. Lloyd
Daniel G. Lloyd, WSBA No. 34221
Assistant City Attorney
Attorney for Defendants
dan.lloyd@cityofvancouver.us

ORDER

Based on the foregoing, IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 14th day of January, 2022.



Lauren King
United States District Judge